

## Wisconsin Court of Appeals: Homeowner's Insurer Properly Issued Loss Payments To Insured

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Wisconsin courts have long recognized a duty on the part of insurers to exercise good faith in settling the first party claims of their insureds. This duty, among other things, precludes insurers from delaying payment of claims absent a reasonable basis. A failure to act in good faith can expose an insurer to a bad faith tort claim, potentially leading to punitive, emotional distress and other damages.

Timely payment of claims is similarly required by Wisconsin statute. Pursuant to Wis. Stat. § 628.46, an insurer must issue payment within 30 days of receipt of the proof of loss required under the policy, or equivalent evidence. Failure to comply with this requirement subjects all overdue payments to a 12 percent annual interest.

When the right to payment is clear and the payee or payees certain, prompt payment is rarely an issue. When the proper payee is less clear, however, an insurer must make difficult decisions about how to best handle payment. The Wisconsin court of appeals' recent decision in *Olson v. Integrity Property and Casualty Insurance Company* addressed such a scenario.

On Dec. 16, 2011, Lawrence J. Olson's home was consumed by fire. Olson's wife was no longer living in the home, which had been provided for Olson's temporary use during the course of divorce proceedings. Yet the home remained marital property subject to division.

Put on notice by the wife's attorney of the divorce court's order precluding Olson or his wife from disposing or transferring marital assets outside the ordinary course or as agreed between the parties, the insurer issued the checks covering Olson's insured losses in the name of Olson and his wife. Olson argued that he was the sole insured on the policy and any interest his estranged wife had in the property was destroyed when the property was destroyed. Accordingly, so Olson's theory, the insurer should have issued the checks in his name alone – or obtained a court order allowing it to include his wife's name.

The court of appeals, like the circuit court, rejected Olson's claim. It observed that Olson and his wife were not yet divorced at the time of the fire and, contrary to Olson's position, his wife had a legal interest in the property under Wisconsin's marital property laws. The court thus found it was Olson's responsibility to bring the issue of the insurance proceeds before the divorce court, if he believed his wife was not entitled to any of the funds.

This most certainly is the right result – and not just from a legal perspective. As a policy matter, a different decision would likely have generated greater pressure on insurers to interplead whenever the proper payee is in question. Interpleader, however, is often not the most practical or desirable route – for the insurer, its insured or other potential payees. By avoiding this result, *Olson* represents a win for insurers and insureds throughout Wisconsin.

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